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No. 242

In the Supreme Court of the United States

OCTOBER TERM, 1960

STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY, INC., AND GEORGE M. RYDER, EXECUTOR OF THE ESTATE OF ALICE D. RYDER, DECEASED, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
CHARLES K. RICE,
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In this case the Tax Court found that: (1) payments made by the corporation, Standard, to each of its officers during the years 1949 through 1951 were intended to compensate them for services rendered during those years only, and a portion thereof constituted unreasonable compensation (R. 70, 73); (2) amounts paid by Standard to the widow of its deceased president—pursuant to an agreement of the majority of its stockholders restricting the transfer of their stock for the purpose of maintaining family control—did not constitute pension payments, but were a distribution of profits which were not deducti-

ble by the corporation, and were includible in the widow's gross income (R. 77); and (3) petitioner Alice D. Ryder did not demonstrate that her failure to file a declaration of estimated taxes for the year 1950 was due to reasonable cause, and consequently the Commissioner correctly assessed against her additions to tax pursuant to Section 294(d)(1)(A) of the Internal Revenue Code of 1939 (R. 88). (The pertinent statutes are set forth in the Appendix, *infra*, pp. 3–4.)

The Court of Appeals, after a careful review of the record, upheld each finding here in issue[1] as supported by substantial evidence and not clearly erroneous. (Pet. 48a, 50a–51a, 54a.) No warrant for further review is presented. The petition for certiorari should be denied.

Respectfully submitted.

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Solicitor General.

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AUGUST 1960.

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[1] The Court of Appeals held (Pet. 55a) that the Commissioner had erroneously imposed a penalty on the taxpayer Alice D. Ryder, for substantial underestimation of her tax for 1950, and this issue is not involved in the present petition.

APPENDIX

Internal Revenue Code of 1939

Sec. 23 [as amended by Sec. 121, Revenue Act of 1942, c. 619, 56 Stat. 798]. Deductions From Gross Income.

In computing net income there shall be allowed as deductions:

(a) *Expenses.*—

(1) *Trade or business expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; * * *

* * * * *

(26 U.S.C. 1952 ed., Sec. 23.)

Sec. 115. Distributions by Corporations.

(a) *Definition of Dividend.*—The term "dividend" when used in this chapter * * * means any distribution made by a corporation to its shareholders, whether in money or in other property, (1) out of its earnings or profits accumulated after February 28, 1913, or (2) out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

* * * * *

(26 U.S.C. 1952 ed., Sec. 115.)

SEC. 294 [as amended by Sec. 118(a), Revenue Act of 1943, c. 63, 58 Stat. 21, and Sec. 13(b), Individual Income Tax Act of 1944, c. 210, 58 Stat. 231]. ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.

* * * * *

(d) *Estimated Tax.*—

(1) *Failure to file declaration or pay installment of estimated tax.*—

(A) *Failure to File Declaration.*—In the case of a failure to make and file a declaration of estimated tax within the time prescribed, unless such failure is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect, there shall be added to the tax 5 per centum of each installment due but unpaid, and in addition, with respect to each such installment due but unpaid, 1 per centum of the unpaid amount thereof for each month (except the first) or fraction thereof during which such amount remains unpaid. In no event shall the aggregate addition to the tax under this subparagraph with respect to any installment due but unpaid, exceed 10 per centum of the unpaid portion of such installment. For the purposes of this subparagraph the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the credits under sections 32 and 35.

* * * * *

(26 U.S.C. 1952 ed., Sec. 294.)

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